

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FERRELL STREET TRUST, et al.,

2:12-CV-2028 JCM (VCF)

Plaintiff(s),

V.

FEDERAL HOME LOAN
MORTGAGE CORPORATION, et al.,

Defendant(s).

ORDER

Presently before the court is defendant/counter-claimant Federal Home Loan Mortgage Corporation’s (“FHLMC”) motion to dismiss plaintiff/counter-defendant Alessi & Koenig, LLC (“A&K”) without prejudice. (Doc. # 18). A&K filed a limited opposition and moved to interplead funds. (Doc. # 20). FHLMC filed a reply. (Doc. # 21).

20 | I. Background

21 This case is a quiet title action. On November 21, 2006, defendant Patricia Leon obtained
22 title to real property located at 2794 Murray Hill Lane, Las Vegas, NV 89142 executing a deed of
23 trust (the “property”), which is in Sunrise Highlands Community Association (the “Sunrise
24 Highlands”). Over time, Leon became delinquent on her mortgage and homeowner’s association
25 payments. Based on the delinquent homeowner’s association payments, Sunrise Highlands retained
26 A&K, a homeowner’s association law firm, to foreclose on the property pursuant to NRS § 116.3116
27 *et seq.*

1 On March 7, 2012, FHLMC, a government sponsored entity involved in the mortgage market,
 2 held a foreclosure sale on the property under the deed of trust executed by Leon. Then on July 25,
 3 2012, A&K foreclosed on a property on behalf of the homeowner's association. A&K sold the
 4 property at auction to plaintiff/counter-defendant Ferrell Street Trust ("Ferrell"). FHLMC's
 5 foreclosure was not recorded until July 26, 2012—one day after A&K foreclosed.

6 On September 27, 2012, plaintiffs A&K and Ferrell filed a complaint to quiet title on the
 7 property, for declaratory relief, and to interplead funds. On November 27, 2012, FHLMC filed its
 8 answer and counterclaim against Ferrell, A&K, and Leon. On January 10, 2013, Ferrell and A&K
 9 filed their answer to FHLMC's counter-claim.

10 Now before the court is FHLMC's motion to dismiss counter-defendant A&K without
 11 prejudice and A&K's motion to interplead funds.

12 **II. Motions**

13 **A. FHLMC's motion to dismiss counter-defendant A&K without prejudice (doc.
 14 # 18)**

15 FHLMC seeks to dismiss counter-defendant A&K without prejudice pursuant to Fed. R. Civ.
 16 P. 41(a)(2). A&K does not oppose this motion. Instead, A&K requests that it be dismissed with
 17 prejudice.

18 The court construes FHLMC's request for A&K's dismissal and A&K's non-opposition to
 19 be dismissed from this action because it does not have any interest in the underlying dispute, as a
 20 stipulation to dismiss A&K. Both parties have made unequivocal statements that they wish to have
 21 A&K dismissed from this action. The only issue left for the court to resolve is whether dismissal
 22 should be with or without prejudice.

23 Plaintiff requests that the dismissal be with prejudice but does not give any reason why
 24 dismissal with prejudice is warranted. Here, the dismissal is not an adjudication on the
 25 merits—therefore, the court finds dismissal without prejudice appropriate.

26 **B. A&K's motion to interplead funds (doc. # 20)**

27 A&K foreclosed on the property on behalf of the homeowners association for \$7,050.00.

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1 After the homeowner's association collected its money due and owing and after A&K was paid for
2 its services, the excess proceeds are \$1,089.73.

3 A&K seeks to interplead these excess proceeds pursuant to Fed. R. Civ. P. 67(a). This rule
4 provides that a party seeking the disposition of a sum of money "on notice to every other party and
5 by leave of court—may deposit with the court all or part of the money or thing, whether or not that
6 party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting
7 deposit." FED. R. CIV. P. 67(a).

8 A&K requests a court order allowing it to deposit with the clerk of the court the excess
9 proceeds from the homeowners association foreclosure sale of \$1,089.73. FHLMC does not oppose
10 A&K's motion to interplead excess funds. The court finds that A&K has no interest in the excess
11 proceeds or the underlying dispute between Ferrell, the buyer at the homeowner's association
12 auction, and FHLMC, the bank that previously foreclosed. The court grants A&K's request.

13 **III. Conclusion**

14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant/counter-
16 claimant Federal Home Loan Mortgage Corporation's motion to dismiss plaintiff/counter-defendant
17 Alessi & Koenig, LLC without prejudice (doc. # 18) be, and the same hereby is, GRANTED.

18 IT I THEREFORE ORDERED that A&K will be dismissed from this action without
19 prejudice following A&K's deposit of the interpled funds.

20 IT IS FURTHER ORDERED that A&K's motion to interplead funds (doc. # 20) be, and the
21 same hereby is, GRANTED.

22 IT IS THEREFORE ORDERED that A&K deposit \$1,089.73 deposit with the clerk of the
23 court within 14 days of entry of this court's order.

24 DATED August 6, 2013.

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UNITED STATES DISTRICT JUDGE
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